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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 SUSAN L.,)
08 Plaintiff,) CASE NO. C20-5303-MAT
09 v.)
10 ANDREW M. SAUL,) ORDER RE: SOCIAL SECURITY
Commissioner of Social Security,) DISABILITY APPEAL
11 Defendant.)
12 _____)

13 Plaintiff proceeds through counsel in her appeal of a final decision of the
14 Commissioner of the Social Security Administration (Commissioner). The Commissioner
15 denied Plaintiff's application for Disability Insurance Benefits (DIB) after a hearing before an
16 Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative
17 record (AR), and all memoranda of record, this matter is REVERSED and REMANDED for
18 further administrative proceedings.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1967.¹ She has an associate's degree, and previously
21 worked as a warehouse administrator, customer service representative, and receptionist. (AR

22 _____
¹ Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 44, 230.)

02 Plaintiff applied for DIB in January 2016. (AR 156-59.) That application was denied
03 and Plaintiff timely requested a hearing. (AR 120-23, 125-32.)

04 In July 2018, ALJ Paula Fow Atchison held a hearing in Phoenix, taking testimony
05 from Plaintiff and a vocational expert. (AR 37-75.) On January 15, 2019, the ALJ issued a
06 decision finding Plaintiff not disabled. (AR 15-28.) Plaintiff timely appealed. The Appeals
07 Council denied Plaintiff's request for review in January 2020 (AR 1-6), making the ALJ's
08 decision the final decision of the Commissioner. Plaintiff appealed this final decision of the
09 Commissioner to this Court.

10 **JURISDICTION**

11 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §
12 405(g).

13 **DISCUSSION**

14 The Commissioner follows a five-step sequential evaluation process for determining
15 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
16 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had
17 not engaged in substantial gainful activity between her alleged onset date (December 5, 2014)
18 and her date last insured (DLI) of March 31, 2018. (AR 17-18.) At step two, it must be
19 determined whether a claimant suffers from a severe impairment. The ALJ found that
20 through the DLI, Plaintiff's osteoarthritis, diabetes, peripheral neuropathy, inflammatory
21 bowel disease, chronic pain, degenerative disc disease, and Crohn's disease were severe
22 impairments. (AR 18-21.) Step three asks whether a claimant's impairments meet or equal a

01 listed impairment. The ALJ found that through the DLI, Plaintiff's impairments did not meet
02 or equal the criteria of a listed impairment. (AR 21.)

03 If a claimant's impairments do not meet or equal a listing, the Commissioner must
04 assess residual functional capacity (RFC) and determine at step four whether the claimant has
05 demonstrated an inability to perform past relevant work. The ALJ found that through the
06 DLI, Plaintiff was capable of performing light work with additional limitations: she could not
07 be exposed to dangerous machinery or unprotected heights. She could occasionally climb
08 ladders, ropes, and scaffolds. She could frequently climb ramps and stairs, balance, stoop,
09 kneel, crouch, crawl, handle, and finger. (AR 21.) With that assessment, the ALJ found that
10 through the DLI, Plaintiff could perform her past work as a collection clerk, cashier's
11 supervisor, and label stamper. (AR 27.)

12 If a claimant demonstrates an inability to perform past relevant work, the burden shifts
13 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make
14 an adjustment to work that exists in significant levels in the national economy. Because the
15 ALJ found that Plaintiff could perform her past work, the ALJ did not proceed to step five.
16 (AR 27-28.)

17 This Court's review of the ALJ's decision is limited to whether the decision is in
18 accordance with the law and the findings supported by substantial evidence in the record as a
19 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
20 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
21 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
22 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which

01 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
 02 F.3d 947, 954 (9th Cir. 2002).

03 Plaintiff argues the ALJ erred in (1) finding various impairments to be not severe at
 04 step two, (2) discounting her subjective symptom testimony, (3) assessing certain medical
 05 evidence and opinions, and (4) discounting lay evidence.² The Commissioner argues that the
 06 ALJ's decision is supported by substantial evidence and should be affirmed.

07 Step two

08 At step two, a claimant must make a threshold showing that her medically
 09 determinable impairments significantly limit her ability to perform basic work activities. *See*
 10 *Bowen v. Yuckert*, 482 U.S. 137, 145 (1987); 20 C.F.R. §§ 404.1520(c), 416.920(c). "Basic
 11 work activities" refers to "the abilities and aptitudes necessary to do most jobs." 20 C.F.R. §§
 12 404.1522(b), 416.922(b). "An impairment or combination of impairments can be found 'not
 13 severe' only if the evidence establishes a slight abnormality that has 'no more than a minimal
 14 effect on an individual's ability to work.'" *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.
 15 1996) (quoting Social Security Ruling 85-28).

16 In this case, the ALJ found multiple conditions to be not severe at step two. (AR 18-
 17 21.) Plaintiff argues that the ALJ's analysis was not supported by substantial evidence and
 18 this error caused harm because the ALJ's RFC assessment fails to account for all of Plaintiff's
 19 limitations, including limitations caused by non-severe impairments. Dkt. 16 at 3-4.

20 Plaintiff fails to identify any particular omitted limitations caused by the impairments

21 ² Plaintiff also assigns error to the ALJ's RFC assessment and step-four findings, but in doing
 22 so only reiterates arguments made in connection with the other assignments of error. Dkt. 16 at 19.
 The Court need not address this assignment of error separately.

01 found to be non-severe, however. Dkt. 16 at 3-4. This failure is fatal to Plaintiff's claim of
02 harmful step-two error. *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007). Because
03 Plaintiff has not shown that the ALJ's step-two findings resulted in the omission of any
04 particular limitation, the Court finds no harmful error in the ALJ's finding certain conditions
05 to be not severe.

06 Subjective symptom testimony

07 The ALJ discounted Plaintiff's allegations because "the evidence generally does not
08 support the alleged loss of functioning." (AR 24.) Plaintiff argues that the ALJ failed to
09 provide a specific, clear, and convincing reason to discount her testimony, as required in the
10 Ninth Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

11 The Court agrees that the ALJ's discussion of Plaintiff's allegations fails to identify
12 any reason sufficient to discount her testimony. The ALJ summarized the medical records
13 that she found supported the RFC assessment, but did not identify any particular reasons to
14 discount Plaintiff's allegations. (AR 24-27.) This type of summary is insufficient to support
15 discounting a claimant's testimony. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 493-94 (9th
16 Cir. 2015) (finding legal error where ALJ failed to identify the testimony found not credible
17 or to link testimony to the parts of record supporting the assessment of the claimant's
18 credibility, and instead stated "only that she found, based on unspecified claimant testimony
19 and a summary of medical evidence, that 'the functional limitations from the claimant's
20 impairments were less serious than she has alleged'").

21 Although the Commissioner points to parts of the records that suggest Plaintiff
22 engaged in activities inconsistent with her allegations or reported improvement with treatment

(Dkt. 20 at 11-12), the ALJ did not refer to this evidence to explain why the record undermined Plaintiff's allegations. The Commissioner also contrasted parts of Plaintiff's testimony with certain treatment notes (Dkt. 20 at 11), but again, the ALJ did not do so. Notably, the Commissioner's section addressing the ALJ's assessment of Plaintiff's testimony does not refer to the ALJ's decision at all, but instead directs the Court's attention to records that the Commissioner argues constitute substantial evidence support the ALJ's finding that Plaintiff's reporting was not entirely reliable. Dkt. 20 at 10-12. Because the Court is constrained to review the ALJ's decision itself, and finds that the ALJ's summary of the medical evidence does not constitute on its own a reason to discount Plaintiff's testimony, the Court finds that the ALJ erred in failing to provide legally sufficient reasons to discount Plaintiff's testimony.

Medical opinion evidence

One of Plaintiff's treating doctors, Mark Goldberg, M.D., provided multiple checkbox form opinions describing Plaintiff's symptoms and limitations. (AR 398-99, 614-15, 1108-09.) The ALJ summarized the opinions (AR 26-27) and explained in one sentence why she gave them minimal weight: "These opinions are not consistent with the record as a whole." (AR 27.)

The ALJ may reject physicians' opinions "by setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)). Rather than merely stating his conclusions, the ALJ "must set forth his own interpretations and explain why they, rather than the doctors', are

01 correct.” *Reddick*, 157 F.3d at 725 (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.
02 1988)).

03 Here, the ALJ stated her conclusion that Dr. Goldberg’s opinions were inconsistent
04 with the “record as a whole”, but did not identify any particular inconsistencies. (AR 27.)
05 The Commissioner suggests (Dkt. 20 at 8) that the Court should look to the evidence cited by
06 the ALJ in finding that Plaintiff could perform a range of light work, as the evidence the ALJ
07 had in mind as inconsistent with Dr. Goldberg’s opinions. The Court declines the invitation
08 to wade through the medical records to determine if or to what extent they are inconsistent
09 with Dr. Goldberg’s opinions. Because the ALJ failed to provide any analysis beyond a mere
10 conclusion, the Court finds that the ALJ erred in assessing Dr. Goldberg’s opinions.

11 Plaintiff also argues that the ALJ failed to account for limitations suggested in credited
12 opinions from examining providers, but fails to point to any part of the credited opinions that
13 specifically identifies any limitation not included in the ALJ’s RFC assessment. Dkt. 16 at 7-
14 8. Accordingly, the Court finds no error in the ALJ’s assessment of the examining source
15 opinions.

16 Lastly,³ Plaintiff argues that the ALJ erred in crediting State agency opinions because
17 these non-examining source opinions are generally entitled to less weight than the opinions of
18 treating or examining sources, and because the State agency consultants did not have the
19 opportunity to review the entire record. Dkt. 16 at 13. Plaintiff has not shown that the ALJ
20 erred in crediting the opinions, however, because she has not shown that the opinions were

21 ³ Plaintiff’s opening brief also contains a lengthy summary of miscellaneous medical findings.
22 Dkt. 16 at 8-13. This summary does not advance Plaintiff’s assignment of error in the ALJ’s decision
and need not be addressed further.

01 contradicted by the remainder of the record. *See Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th
02 Cir. 1995). Furthermore, the ALJ explicitly considered the State agency opinions in the
03 context of the record as a whole. (AR 27.) Thus, the Court finds no error in the ALJ's
04 assessment of the State agency opinions.

05 Lay evidence

06 Plaintiff's mother, Julie Mansfield, wrote a statement describing Plaintiff's symptoms
07 and limitations. (AR 240-47.) The ALJ summarized Ms. Mansfield's statement and
08 explained that she considered it "in as much as it was consistent with the medical evidence
09 record and the record as a whole[.]" (AR 27.)

10 Plaintiff argues that the ALJ failed to provide germane reasons to discount Ms.
11 Mansfield's statement, as required in the Ninth Circuit. *See Dodrill v. Shalala*, 12 F.3d 915,
12 919 (9th Cir. 1993) ("If the ALJ wishes to discount the testimony of the lay witnesses, he
13 must give reasons that are germane to each witness."). The Commissioner contends that an
14 ALJ is entitled to discount a lay witness statement that is inconsistent with the record (Dkt. 20
15 at 10), which may be true, but the ALJ here did not explicitly find Ms. Mansfield's statement
16 to be inconsistent with the record and did not refer to any part of the record contradicting Ms.
17 Mansfield's statement. The ALJ's conclusory finding does not constitute a germane reason to
18 discount Ms. Mansfield's opinion.

19 CONCLUSION

20 For the reasons set forth above, this matter is REVERSED and REMANDED for
21 further administrative proceedings. On remand, the ALJ should reconsider Plaintiff's
22 testimony, Dr. Goldberg's opinions, and Ms. Mansfield's statement, and any other part of the

01 decision as necessary.

02 DATED this 6th day of April, 2021.

03 

04 Mary Alice Theiler
05 United States Magistrate Judge